



06 DEC 2006

KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE CA 92614

In re Application of	:	
ARIC MENON (Deceased)	:	DECISION ON
Application No.: 10/560,093	:	
PCT No.: PCT/DK04/00395	:	REQUEST
Int. Filing Date: 10 June 2004	:	
Priority Date: 12 June 2003	:	UNDER 37 CFR 1.42 and
Attorney Docket no.: PLOUGH5.001APC	:	
For: OPTICAL AMPLIFICATION IN	:	TO WITHDRAW THE
MINIATURIZED POLYMER CAVITY	:	
RESONATORS	:	HOLDING OF ABANDONMENT

This is a decision on applicant's Response to Notification of Missing Requirements filed in the United States Patent and Trademark Office (USPTO) on 02 October 2006 and is a request to withdraw the holding of abandonment as well a request under 37 CFR 1.42. Applicant also submitted a request for a five month extension of time, which is granted.

#### **BACKGROUND**

On 09 December 2005, applicant filed a Transmittal Letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371 with, *inter alia*, the requisite basic national fee.

On 01 March 2006, a Notification of Missing Requirements was mailed to applicant indicating that an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), and surcharge for filing the oath or declaration after the thirty month period, was required. The Notification gave two (2) months within in which to respond and indicated that extensions of time were available under 37 CFR 1.136(a) or until 02 October 2006 (01 October 2006 was a Sunday)..

On 05 September 2006, a Notification of Abandonment was mailed to applicant indicating that the application was abandoned because applicant had failed to response to the Notification of Missing Requirements.

On 02 October 2006, applicant filed a response to the Notification submitting a declaration signed by inventors Soren Kragh, Anders Kristensen, and identifying Elizabeth Mix, as the executor of deceased inventor, Aric Menon.

### DISCUSSION

At the outset, it is noted that the Notification of Abandonment was mailed in error and is hereby **VACATED**. As indicated above, the time period within which to respond to the Notification of Missing Requirements, including extensions of time, expired on 2 October 2006.

37 CFR § 1.42 requires that in the case of the death of the inventor, the legal representative of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent.

37 CFR 1.497(a)(3) requires that the declaration identify each inventor and the country of citizenship of each inventor. 37 CFR 1.497(b)(2) requires the declaration to state the relationship of the person (under 37 CFR 1.42) making the declaration for a deceased inventor. 37 CFR 1.497(b)(2) further states that, if the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration must state that the person is a legal representative and indicate the citizenship, residency and mailing address of the legal representative. The declaration must also state the citizenship, residency and last mailing address of the deceased inventor to comply with 37 CFR 1.497(a)(3).

Although the declaration identifies Elizabeth Mix as the executor the estate of deceased inventor Aric Menon, the declaration is defective because it does not state the country of citizenship, former residency and mailing address for *both* the deceased inventor and the legal representative, to meet the requirements for compliance with 37 CFR 1.497.

What is required is a declaration executed by Elizabeth Mix, which identifies her as executor for deceased inventor Aric Menon. The declaration must provide Elizabeth Mix's citizenship, residency and mailing address and identify Aric Menon as the deceased inventor, providing his citizenship, former residency and mailing address on the declaration.

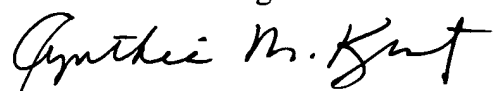
Accordingly, it is inappropriate, at this time, to accord the application status under 37 CFR 1.42.

### CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **DISMISSED WITHOUT PREJUDICE**. The petition to withdraw the holding of abandonment is **GRANTED**. The 05 September 2006 Notification of Abandonment is hereby **VACATED**.

Applicant is required to correct the above-noted defects including the furnishing of a oath/declaration in compliance with 37 CFR 1.42 and 1.497 within **TWO (2) MONTHS** from the mail date of this Decision.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

  
Cynthia M. Kratz  
Attorney Advisor  
Office of PCT Legal Administration

Application No.: 10/560,093

3

Telephone: (571) 272-3286  
Facsimile: (571) 273-0459